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July 24, 2018

The Honorable Leonard P. Stark  
United States District Court  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, DE 19801

### VIA ELECTRONIC FILING

Re: *International Business Machines Corporation v. Groupon, Inc.*,  
C.A. No. 16-122-LPS

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Dear Chief Judge Stark:

At the Court's request, Groupon submits the following proposed language for the jury instruction on willful infringement, and the agreed-upon list of the parties Rule 30(b)(6) witnesses:

(1) In accordance with the Court's guidance regarding instruction 4.7 (Willful Infringement), in light of *Välinge Innovation AB v. Halstead New England Corp.*, No. 16-1082-LPS-CJB, 2018 WL 2411218 (D. Del. May 29, 2018), Groupon proposes the following modification to the first sentence of the second paragraph:

To prove willful infringement of a patent, IBM must prove by a preponderance of the evidence that Groupon had knowledge of the patent and that Groupon's conduct was at least reckless, and [**Groupon Proposes:** that Groupon knew, or should have known, that its conduct amounted to infringement of the patent.]

(2) For instruction 1.10 (Rule 30(b)(6) Deposition Testimony), it is Groupon's understanding that the parties agree to add the following list of 30(b)(6) witnesses to the instruction:

Robert Filepp, Heather Hinton, Thomas McBride, and Arun Iyengar for IBM, and Jason Carlisle, Phillip Dunham, Jim Breen, Damien Schmitz, Jan Krems for Groupon.

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Respectfully,

*/s/ John G. Day*

John G. Day (#2403)

JGD/nml

Attachment

cc: Counsel of Record (via electronic mail; w/attachment)